

**REMARKS**

The Office Action mailed January 4, 2010 has been carefully considered. Within the Office Action Claims 1-24 have been rejected. The Applicant has amended Claims 1, 17 and 24. Reconsideration in view of the following remarks is respectfully requested. An RCE accompanies this reply.

**Rejection under 35 U.S.C. § 103**

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 4,836,975 to Guldner et al. (hereinafter “Guldner”). This rejection is respectfully traversed.

In determining obviousness four factual inquiries must be looked into in regards to determining obviousness. These are determining the scope and content of the prior art; ascertaining the differences between the prior art and the claims in issue; resolving the level of ordinary skill in the pertinent art; and evaluating evidence of secondary consideration. Graham v. John Deere, 383 U.S. 1 (1966); KSR Int’l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007) (“ Often, it will be necessary . . . to look into related teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit.**”) (emphasis added).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713

F.2d 1530 (Fed. Cir. 1983). Thus, when considering the whole prior art reference its entirety, portions that would lead away from the claimed invention must be considered. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983), See M.P.E.P. 2141.02. Thus, it is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731 (Fed. Cir. 1983).

Applicant's specification relates to a device and method for conditioning nuclear fuel assemblies. As specified in the present application, nuclear fuel assemblies require particular procedures for their use, transport and even disposal as waste. Nuclear power plants are provided with a pool in which these assemblies are stored, but this storage is temporary and the nuclear fuel assemblies then have to be evacuated to safe so-called "final" or "interim" storage sites, and in particular including leak tight metallic confinements protected by concrete storage modules.

Applicant's specification states that the solid fuel assemblies are contained within a basket 3, whereby a plurality of baskets are vertically stacked, as shown in Figure 1, within the inner receptacle. Therefore, the inner receptacle can house an increased number of solid fuel assemblies within. This is not taught or suggested in Guldner. In fact, one skilled in the art would not be motivated to modify Guldner's design to accommodate vertically stacked baskets as the hollow containers 4 are directly filled with the radioactive material after the containers 4 are placed within the outer container 2. In contrast, Applicant's device houses the solid fuel assemblies in the baskets which are then vertically stacked in the inner receptacle for storage. For at least these reasons, one skilled in the art would not be motivated to modify Guldner to reach the claimed subject matter.

Additionally, Guldner does not obviate the claimed subject matter as Guldner does not teach or suggest each and every element/limitation in the Claims. Claim 1 recites, *inter alia*, an

inner leak tight metallic receptacle including a loading opening for receiving and conditioning solid nuclear fuel assemblies placed in a basket, wherein a plurality of baskets are vertically stacked within the inner leak tight metallic receptacle. Additionally, Claim 17 recites, *inter alia*, inserting an inner leak tight metallic receptacle into the outer receptacle, the inner leak tight metallic receptacle comprising a loading opening for receiving a plurality of vertically stacked baskets, wherein each basket contains a plurality of solid nuclear fuel assemblies therein, the inner leak tight metallic receptacle and the outer receptacle having dimensions to define a passage remaining free between the two receptacles. Further, Claim 24 recites, *inter alia*, duct enabling drainage of water from between an adjusted receptacle, positioned within the metallic receptacle, and the metallic receptacle, wherein the adjusted receptacle contains a plurality of baskets vertically stacked within the adjusted receptacle, each basket containing one or more solid fuel assemblies therein. As stated above, Guldner does not teach or suggest that the inner receptacle contains a plurality of baskets vertically stacked therein, wherein each of the baskets contain one or more solid fuel assemblies, as recited in Claims 1, 17 and 24. For at least these reasons, Claims 1, 17 and 24 are non-obvious over Guldner and are in condition for allowance.

Claims 2-16 and 18-23 are dependent on respective Independent Claims 1 and 17. As stated above, Claims 1 and 17 are allowable over Guldner. Accordingly, Claims 2-16 and 18-23 are allowable for being dependent on allowable base claims.

Conclusion

It is believed that this reply places the above-identified patent application into condition for allowance. Early favorable consideration of this reply is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-3557.

Respectfully submitted,

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